

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 5669 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

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MAUBHAI DAHYABHAI PATEL - Petitioner(s)

Versus

STATE OF GUJART & 2 - Respondent(s)

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Appearance :

MR SH SANJANWALA for Petitioner(s) : 1,
MR HUKUM SINGH, AGP for Respondent(s) : 1, 3,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/02/2007

ORAL JUDGMENT

1. Shri S.H. Sanjanwala, learned counsel for the
petitioner; Mr. Hukum Singh, learned AGP for the
respondent State. Parties are heard.

2. Present petitioner Manubhai, son of Dahyabhai is before this Court under Article 227 of the Constitution of India, challenging the remand order dated 14.2.92 passed in Revision Case No. TEN.BS 33/88 where under the Gujarat Revenue Tribunal, after holding that the petitioner would be entitled to one unit only had remanded the case for further action.
3. Shri Sanjanwala, learned counsel for the petitioner submits that Valiben, widow of Rambhai Haribhai died on 18.9.64 and though executed a Will in favour of Manubhai, son of Dahyabhai [petitioner], but she had no authority to bequeath the entire property in favour of Manubhai, son of Dahyabhai [petitioner], because the property belonged to joint family and all legal representatives/heirs and successors of Valiben were entitled to succeed to the property.
4. From the records, it appears that on the strength of the Will made by Valiben, present petitioner made an application for entry of his name which was made on 30.11.64 and was

certified on 10.12.65.

5. It is nobody's case that Valiben, widow of Rambhai Haribhai was not owner of the property or her name was wrongly mutated in the record of rights. If Valiben was recorded as a sole owner in the record of rights, then she would be deemed to be the sole owner of the property as presumption of correctness is attached to the entries. The presumption is rebuttable, but unfortunately in the present case, nobody ever challenged the correctness of the said entry, rather the petitioner relying upon the Will made an application for mutation of his name within a period of two months from the date of the death. If in 1964, the petitioner had taken Valiben as the absolute owner and also taken himself to be the absolute owner in view of the Will, then after lapse of long many years and enforcement of the Agricultural Lands Ceiling Act, he would not be allowed to take a somersault and say that the petitioner would be entitled to two units. It is trite to say that if somebody succeeds to the property under a Will, then, he succeeds to

the property in his personal rights. Under the circumstances, the Gujarat Revenue Tribunal was justified in holding that the petitioner would be entitled to one unit only. As the remand order for consideration of other aspect is not challenged before this Court, the said part remains. The petition is dismissed. Rule is discharged accordingly. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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